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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/294,388	04/20/1999	JURGEN SCHULZ-HARDER	A-6621	6079

7590 10/22/2004

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EXAMINER

FLANIGAN, ALLEN J

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/294,388

Applicant(s)

SCHULZ-HARDER, JURGEN

Examiner

Allen J. Flanigan

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 31-63 is/are pending in the application.  
4a) Of the above claim(s) 36-42, 44-46, 48, 50 and 55-57 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 63 is/are allowed.
- 6) ☒ Claim(s) 31-33, 35, 43, 47, 49, 51-54 and 58-62 is/are rejected.
- 7) ☒ Claim(s) 34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

Claims 36-42, 44-46, 48, 50, and 55-57 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in paper No. 7.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 31, 33, 35, 43, 47, 49, 51, 52, and 58-62 are rejected under 35 U.S.C. 102(e) as being anticipated by Schulz-Harder.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Note lines 27-34 of column 8 of Schulz-Harder. The recitation in the claim of a “closed” interior space is deemed to be met by Schulz-Harder, which

shows a cooler enclosed on all sides, with only inlet and outlet openings providing access to the interior space. "Closed" is not construed to be as limited as a claim that recited a space "completely sealed", for example, from contact with the environment or access to any fluid.

Regarding claim 49, see Figs. 2-3 of Schulz-Harder. Regarding claim 51, note openings 24". Regarding claim 52, note the Figs. 14-15 embodiment of Schulz-Harder. Note columns 22 shown in Schulz-Harder regarding the "post-like areas" of claims 47 and 62. Regarding claims 59 and 60, note lines 57-61 of column 5 of Schulz-Harder.

Claims 31-33, 35, 43, 47, 51-54, 58-62 rejected under 35 U.S.C. 102(e) as being anticipated by Staskus.

Note the comments made in regard to Schulz-Harder regarding the "closed" language of the independent claims, which are similarly applicable to this rejection.

Regarding claim 47, note Fig. 3 of Staskus; regarding claim 51, note alignment holes 88. Regarding claims 52-54, note the crossing slots shown in rectangular areas shown in Fig. 6 and shown in clearer detail in Fig. 10. Regarding claims 59-60, note lines 42-47 of column 7 of Staskus.

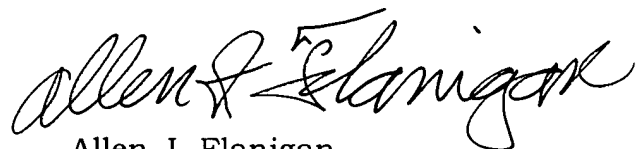
Claim 34 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 63 is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Flanigan whose telephone number is (703) 308-1015. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (703) 308-1272. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Allen J. Flanigan  
Primary Examiner  
Art Unit 3753

AJF